

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
First National Broadcasting Corporation)	
)	
Licensee of Station KXOL(AM))	File No. EB-01-DV-057
Brigham City, Utah)	
Facility ID # 87107)	and
)	
Licensee of Station KSOS(AM))	File No. EB-01-DV-308
Brigham City, Utah)	
Facility ID # 21615)	NAL/Acct. No. 200232800011
)	FRN 0000-0175-25
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 28, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that First National Broadcasting Corporation ("First National"), licensee of AM broadcast stations KXOL and KSOS, licensed to serve Brigham City, Utah, apparently willfully violated Section 73.1125 of the Commission's Rules ("Rules") by failing to maintain a main studio, and apparently willfully and repeatedly violated Sections 11.61 and 73.1820 of the Commission's Rules by failing to conduct and log required Emergency Alert System ("EAS") tests.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that First National is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 13, 2001, FCC Agents from the Denver Office inspected stations KXOL and KSOS at the shared main studio location of 5777 South 3550 West in Roy, Utah. The Agents arrived at approximately 11:30 a.m. MDT, to find the studio building contained within a fenced and gated complex with no station representative present. The only contact information available was a telephone number posted on a sign attached to the complex entry gate for "Prime Communication Sites, LLC."

¹ 47 C.F.R §§ 11.61, 73.1125 and 73.1820.

² 47 U.S.C. § 503(b).

3. Nearly one hour elapsed while the Agents made contact with and until the arrival of the general manager (and President) of First National at the studio. The general manager told the Agents that he was not regularly at the studio, nor were any other employees of First National, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. The stations were operating with automated satellite programming.

4. The inspection revealed that KXOL and KSOS share EAS equipment. The EAS equipment was installed and appeared to be operational. The Agents noted that KXOL and KSOS maintained a single shared log of the required EAS activity. The most recent entry in the EAS log of either a Required Weekly Test ("RMT") and Required Monthly Test ("RWT") was December 6, 2000, *i.e.*, no entries of EAS tests, sent or received, were logged during the period December 6, 2000, through August 13, 2001. The log did not contain either a written explanation of why the tests were omitted from the log or any indication that the chief operator or other personnel attempted to identify the source of any problem. The log did contain, however, an entry for a received EAS test, dated September 14, 2001, at 2:58 p.m., one month into the future.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and "repeated" means the commission or omission of the act more than once or for more than one day.⁴

6. Section 73.1125(a) of the Rules states that "each AM, FM, or TV broadcast station shall maintain a main studio at one of the following locations: (1) Within the station's community of license; (2) At any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) Within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1)." In addition, the station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.⁵ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel. In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful."⁶

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ *See Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

⁶ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 n.6 (1991), *clarified*, 7 FCC Rcd 6800 n.4 (1992).

Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'"⁷

7. Based upon the evidence, we find that First National willfully violated Section 73.1125 of the Rules by failing to maintain a meaningful management and staff presence at the shared main studio for KXOL and KSOS. The main studio was closed and was not staffed at the time of the inspection, which occurred during normal business hours. Thus it appears that First National failed to maintain a full-time management and staff presence at the shared main studio.

8. Section 11.61 of the Rules requires that monthly EAS tests be retransmitted within 15 minutes of receipt, that weekly EAS be conducted at least once a week at random times and EAS tests received and transmitted must be logged in the station's records.⁸ Section 73.1820(a) of the Rules provides, in part, that entries must be made in the station log either manually by a person designated by the licensee who is in actual charge of the transmitting apparatus or by automatic devices. Section 73.1820(a)(1)(iii) provides that all stations must enter each test and activation of the Emergency Alert System (EAS) pursuant to the requirement of 47 C.F.R. Part 11 and the EAS Operating Handbook. Stations may keep EAS data in a special EAS log maintained at a convenient location; however, this log is considered a part of the station log.⁹

9. The shared EAS log for KXOL and KSOS indicated that personnel for both stations failed to log a single transmitted or received test, RMT or RWT from either of the two required sources from December 6, 2000 through August 13, 2001, the date of the FCC inspection. In addition to the omissions in the EAS log, there was no printer attached to the EAS unit, therefore no printouts to support that any EAS tests were received or transmitted, including the RMT, spanning approximately nine months. Based on the evidence, we find that First National willfully and repeatedly violated Sections 11.61 and 73.1820(a)(1)(iii) of the Rules by failing to conduct and properly log required EAS tests.

10. Based on the evidence before us, we find that First National, licensee of stations KSOS and KXOL, willfully violated Section 73.1125 of the Rules by failing to maintain a main studio in accordance with the Rules and willfully and repeatedly violated Sections 11.61 and 73.1820(a)(1)(iii) of the Rules by failing to conduct and properly log required EAS tests. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"),¹⁰ and Section 1.80 of the Rules,¹¹ for failure to comply with the main studio requirements is \$7,000 and for failure to maintain required records is \$1,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the Rules requiring timely retransmission of the RMT and RWT EAS tests. Therefore, we

⁷ *Id.*, 7 FCC Rcd at 6802.

⁸ 47 C.F.R. § 11.61(a)(1)(v). Effective May 16, 2002, the Commission's Rules require monthly EAS tests to be retransmitted within 60 minutes of receipt of the required monthly test message. *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002).

⁹ 47 C.F.R. § 73.1820(a)(1)(iii).

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 C.F.R. § 1.80.

must determine what an appropriate amount should be for this violation.¹² It is necessary to retransmit the monthly EAS tests to ensure the operational integrity of the EAS system in the event of an actual disaster. The requirement that stations retransmit the monthly EAS tests is similar in both nature and severity to other required operational readiness checks. As failure to make measurements or conduct required monitoring carries a base forfeiture amount of \$2,000, pursuant to the *Forfeiture Policy Statement*, the forfeiture for violation of Section 11.61 of the Rules will be assessed in the amount of \$2,000. KSOS and KXOL are co-located, therefore, the base forfeiture amount for each violation is applied to First National's operation of KSOS and KXOL as one entity. Accordingly, the total base forfeiture amount for the noted violations is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,¹³ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁴ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹⁵ First National Broadcasting Corporation is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violations of Section 73.1125(a) and 73.1820(a)(1)(iii) of the Rules, 47 C.F.R. §73.1125(a) and 47 CFR §73.1820(a)(1)(iii).

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,¹⁶ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, First National Broadcasting Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

¹² The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the...[*Forfeiture Policy Statement*]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17,099. See e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁶ 47 C.F.R. § 1.80.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, SW, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.¹⁷

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 4269, Return Receipt Requested and First Class Mail to First National Broadcasting Corporation, 5777 South 3550 West, Roy, UT 84067.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

¹⁷ See 47 C.F.R. § 1.1914.